

1 YAAKOV M. ROTH
2 Acting Assistant Attorney General
3 Civil Division
4 SARAH L. VUONG (CA Bar 258528)
5 Assistant Director
6 WILLIAM H. WEILAND (Mass. Bar 661433)
7 Senior Litigation Counsel
8 LAUREN BRYANT (NY Bar 5321880)
9 ANNA DICHTER (NJ Bar 304442019)
10 JEFFREY HARTMAN (WA Bar 49810)
11 CATHERINE ROSS (DC Bar 9007404)
12 AMANDA SAYLOR (FL Bar 1031480)
13 ERIC SNYDERMAN (VA Bar 99563)
14 Trial Attorneys
15 U.S. Department of Justice, Civil Division
16 Office of Immigration Litigation
17 General Litigation and Appeals Section
18 P.O. Box 868, Ben Franklin Station
19 Washington, DC 20044
20
21 Attorneys for Defendants

22 UNITED STATES DISTRICT COURT
23
24 NORTHERN DISTRICT OF CALIFORNIA
25
26 SAN FRANCISCO DIVISION

27
28 NATIONAL TPS ALLIANCE, *et. al.*,
19 Plaintiff,
20 v.
21 KRISTI NOEM, in her official capacity as
22 Secretary of Homeland Security, *et. al.*,
23 Defendants.

Case No. 3:25-cv-1766-EMC

Judge: Hon. Edward M. Chen

MOTION TO RECONSIDER THE COURT'S MAY
2, 2025 AND MAY 9, 2025 ORDERS AND STAY
CURRENT DEADLINES

1 On May 2, 2025, this Court held “that a stay of discovery pending the interlocutory appeal is not
 2 warranted.” ECF No. 129 at 3. On May 9, 2025, the Court further ordered the Defendants to search
 3 documents using the search terms proposed by Plaintiffs for at least fifteen custodians and produce those
 4 documents by today, May 19, 2025. ECF No. 135. Considering the Supreme Court’s stay of the Court’s
 5 postponement order this afternoon, Defendants now request that the Court reconsider this decision and
 6 immediately stay current deadlines. *See Noem v. Nat. TPS Alliance*, No. 24A1059 (S. Ct. May 19, 2025)
 7 (“Order”).

8 On May 19, 2025, the Supreme Court, in an 8-1 decision, granted the government’s application
 9 for a stay of this Court’s March 31, 2025 Order “pending the disposition of the appeal in the United States
 10 Court of Appeals for the Ninth Circuit and disposition of a petition for a writ of certiorari.” *Noem v. Nat.*
 11 *TPS Alliance*, No. 24A1059 (S. Ct. May 19, 2025) (“Order”). This stay reverses the Court’s order granting
 12 the motion to postpone the Secretary of Homeland Security’s “decision to vacate the extension of the 2023
 13 Designation and to terminate the 2023 Designation.” *Nat. TPS Alliance*, --- F.Supp.3d ----, 2025 WL
 14 957677, at *47 (N.D. Cal. Mar. 31, 2025).

15 As required in Local Rule 7-9, “a material difference in fact or law exists from that which was
 16 presented to the Court before entry of the interlocutory order.” Specifically, the Supreme Court has stayed
 17 this Court’s postponement order pending the appeal to the Ninth Circuit. For the Supreme Court to grant
 18 an application for a stay, an applicant must establish “a likelihood of success on the merits, a reasonable
 19 probability of obtaining certiorari, and a likelihood of irreparable harm.” *See Hollingsworth v. Perry*, 558
 20 U.S. 183, 190 (2010) (per curiam). The government challenged the Court’s order as one that contravened
 21 the express bar on judicial review at 8 U.S.C. § 1254a(b)(5)(A), sidestepped black-letter law authorizing
 22 agencies to reverse as-yet-inoperative actions, and embraced a baseless equal-protection theory. In
 23 granting the stay, the Supreme Court indicated that the government has established a likelihood of success
 24 on the merits.

25 Now, with the benefit of the Supreme Court’s order, the grounds relied upon by this Court in its
 26 May 2, 2025 and May 9, 2025 orders directing extra-record discovery on an accelerated basis can no
 27 longer be relied upon. Specifically, this Court first stated that there is no guarantee that the Ninth Circuit
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1 will rule promptly and, therefore, Haitian TPS beneficiaries could lose their status in early August. ECF
2 No. 129, at 2. But the Ninth Circuit will likely move quickly in the face of the Supreme Court's directive
3 that its stay is in effect "pending the disposition of the appeal in the United States Court of Appeals for
4 the Ninth Circuit." Order. The concern that the Ninth Circuit will not move fast enough is likely alleviated
5 here. In granting the stay of this Court's postponement order, the Supreme Court also added credence to
6 the Defendants' ultimate likelihood of success on the merits. The significant jurisdictional questions now
7 pending before the Ninth Circuit (which are likely to make their way to the Supreme Court as well) only
8 amplify the reason for a stay of this court's discovery order here, as it remains a waste of both judicial and
9 government resources to rush through production only to discover this Court had no jurisdiction to order
10 production at all. Similarly, any future decision of the Secretary regarding Haiti is likely unreviewable as
11 well, making the not yet ripe claims of Plaintiffs there a grossly insufficient basis for accelerated extra-
12 record discovery.

13 This Court also relied heavily on the irreparable harm to Plaintiffs that would occur if the Ninth
14 Circuit held that the government was likely to succeed on the merits. Specifically, the Court was concerned
15 that "Venezuelan TPS holders would no longer have any legal status" and therefore, it needed to expedite
16 final adjudication. ECF No. 129, at 3. But the Supreme Court's order to stay the postponement has changed
17 the landscape for TPS holders. The Supreme Court's order will remain in effect until there is a disposition
18 of a timely writ of certiorari, which if granted will extend the stay until judgment issues. Order. TPS has
19 terminated for many TPS holders. The Court's concern that delayed discovery and adjudication on the
20 merits would deprive TPS beneficiaries expedited adjudication is no longer pressing where the Supreme
21 Court has overturned the stay.

22 This Court's analysis of hardship to the government has also been called into question. The
23 government had to demonstrate a likelihood of irreparable harm for the Supreme Court to issue its stay.
24 See *Hollingsworth*, 558 U.S. at 190. As the Supreme Court had to have found, the hardship to the
25 government is more than the mere requirement to defend a lawsuit, but rather a judicial intrusion into
26 workings of the Executive Branch. In fact, the documentation that Plaintiffs seek through discovery goes
27 to the heart of these workings, allowing both Plaintiffs and the Court to question the basis for the
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1 determinations reached with respect to TPS for Venezuela. But that sort of prying into Executive functions
 2 is exactly what the Congress forbid under 8 U.S.C. § 1254a(b)(5)(A) and doing so before this Court's
 3 authority is sufficiently established is exactly the type of harm Congress intended to avoid when it
 4 eliminated judicial review.

5 Because there has been a material change in the facts and law of this case, Defendants request that
 6 the Court reconsider its Orders on discovery from May 2 and May 9.¹ Defendants further renew the request
 7 to stay additional deadlines that are pending before this Court.

8 Dated: May 19, 2025

9 Respectfully submitted,

10 YAAKOV M. ROTH
 11 Acting Assistant Attorney General
 Civil Division

12 WILLIAM H. WEILAND (Mass. Bar 661433)
 13 Senior Litigation Counsel

14 CATHERINE ROSS (DC Bar 9007404)
 15 ERIC SNYDERMAN (VA Bar 99563)
 16 ANNA DICHTER (NJ Bar 304442019)
 17 LAUREN BRYANT (NY Bar 5321880)
 18 AMANDA SAYLOR (FL Bar 1031480)
 Trial Attorneys

19 /s/ Sarah L. Vuong
 SARAH L. VUONG
 20 Assistant Director (CA Bar 258528)
 U.S. Department of Justice, Civil Division
 21 Office of Immigration Litigation
 General Litigation and Appeals Section
 P.O. Box 868, Ben Franklin Station
 Washington, DC 20044
 Tel: (202) 305-1263
 sarah.l.vuong@usdoj.gov

22 *Attorneys for the Defendants*

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 27 ¹ As ordered, Defendants produced materials responsive to Plaintiffs' RFPs 4-5 and 7-9 on May 16, 2025.
 Defendants will hold the materials responsive to RFPs 1-2 and 6 until the Court rules on this Motion.